

**BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

**In the Matter of the Petition for)
Termination of Probation of:)**

ARMEN A. KASSABIAN, M.D.)

Case No. 800-2016-024240

**Physician's and Surgeon's)
Certificate No. A96289)**

OAH No. 2017061154

Petitioner)

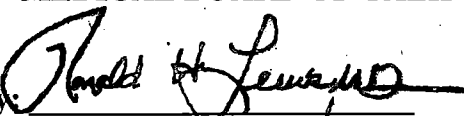
DECISION

The attached Proposed Decision is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on February 8, 2018.

IT IS SO ORDERED January 9, 2018.

MEDICAL BOARD OF CALIFORNIA

By: 

**Ronald Lewis, M.D., Chair
Panel A**

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STATE OF CALIFORNIA

In the Matter of the Petition for Termination of
Probation of:

ARMEN A. KASSABIAN, M.D.,
Physician's and Surgeon's Certificate
No. A 96289,

Petitioner.

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PROPOSED DECISION

Howard W. Cohen, Administrative Law Judge with the Office of Administrative Hearings, heard this matter on November 28, 2017, in Los Angeles, California.

Edward C. Stark, Attorney at Law, represented petitioner Armen A. Kassabian, M.D., who was present.

Nicholas B. C. Schultz, Deputy Attorney General, appeared under Government Code section 11522.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on November 28, 2017.

FACTUAL FINDINGS

Petitioner filed a Petition to Terminate Probation, dated June 27, 2016.

On July 1, 2006, the Board issued Physician's and Surgeon's Certificate number A 88229 to petitioner. The certificate is scheduled to expire on June 30, 2018.

On June 26, 2013, the Board's executive director filed an Accusation against petitioner in case number 17-2012-222978, stating seven causes for discipline, i.e., abuse of drugs and alcohol, violation of drug laws (four causes), conviction of a crime (driving under the influence), and unprofessional conduct.

The Accusation included the following factual allegations:

17. From 2007 through 2011, Respondent binged on drinking alcohol, although he had developed a drinking problem before then. During that time he also used cocaine. In 2010, he began smoking methamphetamines. From 2011 until 2012, Respondent's methamphetamine use escalated. The methamphetamine binges caused Respondent to miss work at his clinic or show up sporadically. From February through April 2012, Respondent binged on crystal methamphetamines and "couldn't stop doing it" even though his wife threatened to leave him and even though his parents "cut him off."

18. From 2009 through 2011, Respondent prescribed himself a quantity of 100 hydrocodone tablets, 7.5 mg[,] every month. Additionally, there were periods of three month increments, where he simultaneously prescribed himself hydromet syrup. Moreover, between 2009 and 2011, Respondent prescribed himself Alprazolam and Lorazepam. During the same time frame, Respondent admittedly had an opiate addiction and abused Vicodin. He was unable to explain when or how much of the aforementioned prescription medications he took. On or about April 19, 2012, Respondent checked himself into a rehabilitation center. [¶] . . . [¶]

24. On or about January 10, 2006, Respondent was convicted for driving while under the influence in the state of New Jersey. Subsequently, his driver's license was suspended for six months.

(Exs. 4, 5.)

On May 13, 2014, the Board issued a Decision, effective June 12, 2014, adopting a Stipulated Settlement and Disciplinary Order (Stipulation) signed by petitioner. The Stipulation recites that petitioner "agrees that if he ever petitions for early termination or modification of probation . . . , all of the charges and allegations contained in Accusation No. 17-2012-222978 shall be deemed true, correct and fully admitted by [petitioner] for purposes of that proceeding" (Ex. 5.) For purposes of this hearing, therefore, those charges and factual allegations (see Factual Findings 3 and 4, above), are deemed true, correct, and admitted.

The 2014 Decision revoked petitioner's certificate, stayed the revocation, and placed petitioner on probation for five years on various terms and conditions, including requiring that he maintain a record of all controlled substances ordered, prescribed, dispensed, administered, or in his possession; abstain from personal use or possession of controlled substances other than medications lawfully prescribed to him by another physician; abstain from alcohol use; submit to biological fluid testing; enroll in a Physician Assessment and Clinical Education (PACE) Program prescribing practices course; enroll in a PACE medical record keeping course; enroll in a

professionalism program (ethics course); undergo and continue psychotherapy treatment with a Board-approved provider; pay for a weekly practice and billing monitor; and submit quarterly declarations of compliance with probation. Probation is scheduled to terminate in June 2019.

At hearing, petitioner confirmed his admission of the truth of the charges and allegations leading to his probation. He described various factors leading to his alcohol and drug abuse, including depression, anxiety, and a bad and failing marriage. He generally restricted his drug use to weekends or nights he was not on call, and cancelled appointments or rescheduled patients to avoid putting anyone at risk. In April 2012, petitioner had what he called a moment of clarity, when he knew he needed help. He checked into a drug rehabilitation program, Passages, for 30 days. Since his sobriety date of April 19, 2012, petitioner has used no drugs or alcohol. When the program was terminating, he employed a sobriety companion at the recommendation of his therapist. He joined a Physician Assistance Group (PAG) and Alcoholics Anonymous (AA), and implemented a reduced schedule at work so he could focus on his recovery. He shared his feelings and experiences by talking at different treatment centers. He sponsored others at AA, and worked the steps of the 12-step program several times. He submitted to weekly random drug tests and a hospital monitor. This all occurred between April 19, 2012, and June 12, 2014, prior to the Board disciplining his certificate. No evidence was introduced to show that the Board was unaware of these activities when it determined in May 2014 that five years' probation was appropriate.

Since being placed on probation, petitioner has continued his recovery efforts while practicing medicine. He currently attends two PAG meetings weekly, as well as AA meetings and NA meetings, and sees his sponsor regularly. He shares his fears and resentments, and has given his telephone number to hundreds of people. He has become more involved in the affairs of Providence Saint Joseph Medical Center in Burbank and was elected Chairman of the Urology Department in 2015 and 2017. He has learned to ask for help, not hide his negative feelings, and accept himself and others as they are. He remarried and is devoted to his wife and his two young children. He has repaired his relationship with his previous wife and oldest son.

If his petition is granted, he testified, he will not alter his recovery efforts. But he will once again be able to service his prior managed care patients, patients on Medi-Cal and Medicare, and indigent patients. He was removed from health plan and insurance panels when he was placed on probation. Network insurance providers have told him they will reinstate him when his probation terminates.

Dianna Gharibian, a Board employee since 1990 and an inspector at the probation unit in Glendale since 2010, was assigned in June 2014 to serve as petitioner's probation monitor. Acknowledging that it is unusual for a probation monitor to appear on behalf of a petitioner, Gharibian testified that petitioner has shown excellent compliance with the terms of probation every quarter, and has always tried to meet or exceed what she has asked of him. Even at petitioner's intake interview, he provided Gharibian with certificates for some probation-required courses he had already completed. He is proactive in his recovery; he has not missed any calls to First Source, which performs biological fluid testing, nor has he had any positive tests. There has been only one

discrepancy in petitioner's probation record. On January 26, 2017, as a result of information in a Controlled Substance Utilization Review and Evaluation System (CURES) report, the Board issued petitioner a citation for non-compliance with probation condition number 1, which requires him to log prescriptions of controlled substances. The CURES report showed that petitioner had prescribed Clonazepam, a benzodiazepine, to a patient, and testosterone to several patients, but those prescriptions did not appear on petitioner's log. After investigation, the Board determined that the patient prescribed Clonazepam was not, in fact, petitioner's patient, and should not have appeared on the CURES report. As for the testosterone prescriptions, petitioner told Gharibian that he did not realize testosterone was a controlled substance, apologized, and corrected his practice. The Board fined him \$350 for the violation and did not file a petition to revoke probation; he has not repeated the error. Even considering the citation, Gharibian recommends that the petition be granted; she has no concern for public safety where petitioner is concerned.¹ Petitioner's compliance with probation and his recovery have been outstanding and she believes he will continue to do well.

Tracy R. Zemansky, Ph.D., a licensed clinical psychologist and addiction specialist, has treated petitioner through the PAG she helped found in 2008, and continues to oversee his biological fluid testing. Dr. Zemansky wrote a letter on behalf of petitioner, stating under penalty of perjury that, since petitioner began participating in the PAG on June 21, 2012, under a five year contract, he has met or exceeded requirements, including random biological testing with daily check-in, attendance at two weekly, 90-minute healthcare professionals' support group meetings, regular attendance at a minimum of four to five community-based self-help meetings per week and an active recovery program, and regular compliance reports from worksite and hospital monitors, well-being committees, and other treatment providers. She wrote that petitioner "has shown by his actions that he is invested in becoming truly sober, not 'simply' abstinent." (Ex. 1, p. 38.) She found petitioner to be:

an engaged group participant who practices a serious AA program. He has attended far more than the "minimum" expected number of 12-Step meetings, has worked regularly with his sponsors on practicing the 12 Steps as a way of life, and has been involved in numerous 12 Step service commitments. . . . [¶] . . . [¶]

. . . [Petitioner] has been open about his successes and his challenges; he has been willing to share his difficulties. These are

¹ The Board issued another citation to petitioner during probation, in January 2016, for maintaining illegible records for two patients in 2011, prior to his sobriety date and prior to his license discipline. This was not found to be a probation violation. There was also a statement of charges filed against petitioner in New York, where petitioner was also licensed but never practiced, after the Board in California disciplined his license here. The New York matter was resolved without a hearing.

true markers of recovery, particularly for highly educated and well-trained professionals who learn early on that the process of “sharing vulnerability is to be seen as weak.” [Petitioner] has been an example of the opposite—true strength is in sharing whatever happens to be real in that moment.

(*Id.* at pp. 38-39.)

Kim Nakae, a licensed marriage and family therapist whose practice focuses on chemical dependency, testified on behalf of petitioner. He has worked on the Board’s diversion evaluation committee and for the State Bar lawyers’ assistance program; in September 2013, Nakae took over petitioner’s PAG group sessions from Dr. Zemansky. Nakae testified that petitioner’s attendance at PAG, two times per week for the past four years, has been “stellar,” and that petitioner has done an excellent job with his recovery. Unlike some others whose participation is perfunctory, petitioner has made the realization and commitment to take care of himself and be honest with himself about his need for support. He has been exceptionally engaged and open about his stressors, and shows no indications of relapse. His involvement in AA is above and beyond what AA requires, and he has been helpful to others in PAG. According to Nakae, there is no reason to believe petitioner would pose any danger to patients or the public if probation terminated early. Nakae testified that the best evidence is petitioner’s active engagement in his ongoing program and his five years of sobriety; he believes that five years is a benchmark and that the rate of relapse after five years is significantly lower.

Howard C. Frydman, M.D., a urologist for 35 years with privileges at Providence Saint Joseph Medical Center, and a clinical professor of urology at USC Medical School, testified on petitioner’s behalf. Dr. Frydman became petitioner’s practice monitor about four years ago; he has been reviewing petitioner’s patient charts weekly and filing reports with the Board. Petitioner has met all his requirements, and is an outstanding urologist; Dr. Frydman has never seen any evidence of a relapse by petitioner. He supports early termination of probation; based on what he has seen as petitioner’s practice monitor, he believes petitioner will pose no risk to patients or society. Petitioner disclosed to Dr. Frydman the citation for failing to list testosterone on his controlled substance log; Dr. Frydman testified that he was surprised because he, also a urologist, did not know testosterone was a controlled substance.

Jeffrey J. Merrick is a trained interventionist who has provided sober companion support to 25 to 30 professionals recovering from alcohol and drug addiction; he himself has been sober since 2006. Merrick met with petitioner at the suggestion of petitioner’s primary therapist while petitioner was in a treatment center in 2012. They did very active work together; he found that petitioner always did more than was expected of him, took recovery very seriously, and immersed himself in the 12-step AA and Narcotics Anonymous (NA) community. Petitioner went on a part-time work schedule, unusual for professionals, and unusual while going through divorce, in order to devote the time to his recovery efforts. He participated in 90 PAG meetings in 90 days, a very difficult process. He took on many service commitments, such as becoming treasurer and secretary

of his AA group, providing free services for indigent patients at a Glendale Adventist festival, and volunteering with the Society of Armenian Orphans; successful recovery includes devoting time to service to others. He immersed himself in general meetings of AA and NA, not just meetings for professionals, which shows pride in and openness about his recovery. He attended the National Conference of Recovering Physicians in Colorado and formed lasting relationships there. Petitioner is devoted to his wife, children, and extended family, a strong indicator of recovery. If probation is terminated, Merrick testified, he is very confident that petitioner will continue to succeed and thrive. Merrick testified that continued probation will not make any difference in petitioner's recovery, which does not depend on monitoring.

Petitioner submitted several character reference letters, all signed under penalty of perjury, in addition to Dr. Zemansky's letter. Raymond H. Schaerf, M.D., a Board-certified thoracic and cardiothoracic surgeon, and a friend and colleague of petitioner's, wrote that petitioner is an excellent doctor who is "totally committed to his recovery." (Ex. 1, p. 33.) Raffi Mesrobian, M.D., a colleague of petitioner who is Board certified in Otolaryngology and the former Chief of the Medical Staff at Providence Saint Joseph Medical Center, wrote that petitioner is "a skilled, dedicated doctor, an extremely caring professional, but also is completely committed to his recovery. . . . I frequently run into him when his is on the way to meetings and events dealing with addiction and sobriety and somehow, even with his very busy practice, he carves out the time to enthusiastically participate in these meetings." (Ex. 1, pp. 41-42.) He attested to petitioner's stability and the continuity of his rehabilitative efforts, and believes that petitioner is in no danger of a relapse; petitioner "is appreciative of his second chance to be a fully functioning, well respected doctor, husband, parent and friend and he will not do anything to risk any of these treasured parts of his life." (*Id.* at p. 42.) Dr. Frydman and Jeffrey Merrick, who testified at hearing, submitted letters as well.

As reflected in the documents accompanying the petition, petitioner's testimony, and the testimony of numerous witnesses in support of the petition, petitioner has addressed quite seriously the issues for which the Board disciplined him, transforming his life and his way of thinking. While he abused various substances over a period of at least five years, the actions he has taken to maintain his sobriety for over five years convincingly demonstrate that two additional years of probation will not appreciably reduce any risk of danger to the safety and welfare of the public or his patients. The record as a whole warrants termination of probation.

LEGAL CONCLUSIONS

Petitioner has established that it would be consistent with the public interest to grant early termination of his probation, by reason of Factual Findings 7 through 16.

Petitioner bears the burden of proving both his rehabilitation and his fitness to practice medicine. (*Housman v. Board of Medical Examiners* (1948) 84 Cal.App.2d 308.) The standard of proof is clear and convincing evidence. (*Hippard v. State Bar* (1989) 49 Cal.3d 1084, 1092; *Feinstein v.*

State Bar (1952) 39 Cal.2d 541, 546-547.) Petitioner's burden required a showing that he is no longer deserving of the adverse character judgment associated with the discipline imposed against his certificate. (*Tardiff v. State Bar* (1980) 27 Cal.3d 395, 403.) Petitioner has sustained his burden of proof.

The administrative law judge hearing the petition "may consider all activities of the petitioner since the disciplinary action was taken, the offense for which the petitioner was disciplined, the petitioner's activities during the time the certificate was in good standing, and the petitioner's rehabilitative efforts, general reputation for truth, and professional ability." (Bus. & Prof. Code, § 2307, subd. (e).) The Board shall evaluate the petitioner's evidence of rehabilitation considering the relevant criteria including the nature and severity of the acts for which the petitioner was disciplined; the time that has elapsed since commission of those acts; and evidence of rehabilitation submitted by the petitioner. (Cal. Code Regs, tit. 16, §1360.2.)

Protection of the public "shall be the highest priority" for the Board and administrative law judges in exercising their disciplinary authority. (Bus. & Prof. Code, § 2307, subd. (a).)

Petitioner has demonstrated by clear and convincing evidence that the public would not be endangered if he were granted full privileges of licensure. Mere compliance with the terms of probation for three years would ordinarily be insufficient to demonstrate to the Board, which imposed a probationary term of five years, that petitioner can practice safely. Abuse of drugs and alcohol, violation of drug laws, conviction of a crime, and unprofessional conduct are very serious. Nevertheless, petitioner's conduct during the first three years of probation, corroborated by the testimony of colleagues and of petitioner's probation monitor and practice monitor, and by documentation, and petitioner's intensive rehabilitative efforts and two years of sobriety prior to probation, have been sufficient for him to demonstrate rehabilitation. The fact that he cannot participate on insurance panels is not a statutory or regulatory factor relevant to granting early probation termination. On the other hand, given his ability to practice safely, removal of petitioner's probationary status will again allow him to care for an underserved patient population. On this record, early termination of probation is justified.

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ORDER

The petition of Armen A. Kassabian, Physician's and Surgeon's Certificate No. A 96289, for termination of probation, is granted.

DATED: December 8, 2017

DocuSigned by:

Howard W. Cohen

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HOWARD W. COHEN

Administrative Law Judge

Office of Administrative Hearings